

IB 05-318

E000352 SES-T/C-20051102-01506 IB2005002535
Vyvx, LLC

Approved by OMB
3060-0678

APPLICATION FOR SATELLITE SPACE AND EARTH STATION AUTHORIZATIONS FOR TRANSFER OF CONTROL OR ASSIGNMENT FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	FCC Use Only
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APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:

Vyvx - SES Temp T&R CC (T/C)

1-8. Legal Name of Applicant			
Name:	Vyvx, LLC	Phone Number:	918-547-2764
DBA Name:		Fax Number:	918-547-9446
Street:	One Technology Center 15L	E-Mail:	Adam.Kupetsky@wiltel.com
City:	Tulsa	State:	OK
Country:	USA	Zipcode:	74103 -
Attention:	Adam Kupetsky		

9-16. Name of Contact Representative

Name:	Kent D. Bressie	Phone Number:	202-730-1337
Company:	Harris, Wiltshire & Grannis LLP	Fax Number:	202-730-1301
Street:	1200 Eighteenth St., N.W. Suite 1200	E-Mail:	kbressie@harriswiltshire.com
City:	Washington	State:	DC
Country:	USA	Zipcode:	20036-2560
Attention:		Relationship:	Legal Counsel

CLASSIFICATION OF FILING

17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.

- ☒ a1. Earth Station
- ☐ a2. Space Station

- (N/A) b1. Application for License of New Station
- (N/A) b2. Application for Registration of New Domestic Receive-Only Station
- (N/A) b3. Amendment to a Pending Application
- (N/A) b4. Modification of License or Registration
- ☐ b5. Assignment of License or Registration
- ☒ b6. Transfer of Control of License or Registration
- (N/A) b7. Notification of Minor Modification
- (N/A) b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite
- (N/A) b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States
- (N/A) b10. Other (Please specify)

<p>17c. Is a fee submitted with this application?</p> <p><input checked="" type="radio"/> If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).</p> <p><input type="radio"/> Governmental Entity <input type="radio"/> Noncommercial educational licensee</p> <p><input type="radio"/> Other (please explain):</p>					
<p>17d.</p> <table> <tr> <td>Fee Classification A CNX – Fixed Satellite Transmit/Receive Earth Station</td> <td>Quantity 1 (First Station)</td> </tr> <tr> <td>Fee Classification B</td> <td>Quantity 0 (Each Additional Station)</td> </tr> </table>		Fee Classification A CNX – Fixed Satellite Transmit/Receive Earth Station	Quantity 1 (First Station)	Fee Classification B	Quantity 0 (Each Additional Station)
Fee Classification A CNX – Fixed Satellite Transmit/Receive Earth Station	Quantity 1 (First Station)				
Fee Classification B	Quantity 0 (Each Additional Station)				
<p>18. If this filing is in reference to an existing station, enter:</p> <p>(a) Call sign of station: Not Applicable</p>	<p>19. If this filing is an amendment to a pending application enter:</p> <table> <tr> <td>(a) Date pending application was filed: Not Applicable</td> <td>(b) File number of pending application: Not Applicable</td> </tr> </table>	(a) Date pending application was filed: Not Applicable	(b) File number of pending application: Not Applicable		
(a) Date pending application was filed: Not Applicable	(b) File number of pending application: Not Applicable				

TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- ☒ a. Fixed Satellite
- ☐ b. Mobile Satellite
- ☐ c. Radiodetermination Satellite
- ☐ d. Earth Exploration Satellite
- ☐ e. Direct to Home Fixed Satellite
- ☐ f. Digital Audio Radio Service
- ☐ g. Other (please specify)

21. STATUS: Choose the button next to the applicable status. Choose only one.

- ☒ Common Carrier ☐ Non-Common Carrier

22. If earth station applicant, check all that apply.

- ☒ Using U.S. licensed satellites
☒ Using Non-U.S. licensed satellites

23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

- ☐ Connected to a Public Switched Network ☒ Not connected to a Public Switched Network ☐ N/A

24. FREQUENCY BAND(S): Place an "X" in the box(es) next to all applicable frequency band(s).

- ☐ a. C-Band (4/6 GHz) ☒ b. Ku-Band (12/14 GHz)
☐ c. Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower: Frequency Upper:

TYPE OF STATION

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

- ☐ a. Fixed Earth Station
- ☒ b. Temporary-Fixed Earth Station
- ☐ c. 12/14 GHz VSAT Network
- ☐ d. Mobile Earth Station
- ☐ e. Geostationary Space Station
- ☐ f. Non-Geostationary Space Station
- ☐ g. Other (please specify)

26. TYPE OF EARTH STATION FACILITY: Choose only one.

- ☒ Transmit/Receive ☐ Transmit-Only ☐ Receive-Only ☐ N/A

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an "X" in the box(es) next to all that apply.)

Not Applicable

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.

☐ Yes ☒ No

ALIEN OWNERSHIP Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30–34.

29. Is the applicant a foreign government or the representative of any foreign government?

☐ Yes ☒ No

30. Is the applicant an alien or the representative of an alien?

☐ Yes ☒ No
☐ N/A

31. Is the applicant a corporation organized under the laws of any foreign government?

☐ Yes ☒ No
☐ N/A

32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?

☐ Yes ☒ No
☐ N/A

33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?

☐ Yes ☒ No
☐ N/A

34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.

BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules?
If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.

☐ Yes ☒ No

36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of circumstances.

☐ Yes ☒ No

37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of circumstances.

☐ Yes ☒ No

<p>38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of circumstances</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>
<p>39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhibit, an explanation of the circumstances.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>
<p>40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.</p>	
<p>41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No</p>
<p>42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>

42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?

43. Description. (Summarize the nature of the application and the services to be provided).

(If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

Applicant seeks consent to the transfer of control of the listed license from Leucadia National Corporation to Level 3 Communications, LLC. For additional detail regarding this transaction, see Attachment 1.

Exhibit Q43

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- ☐ Individual
- ☐ Unincorporated Association
- ☐ Partnership
- ☒ Corporation
- ☐ Governmental Entity
- ☐ Other (please specify)

45. Name of Person Signing
Joseph Orlando

46. Title of Person Signing
CFO & VP

47. Please supply any need attachments.

Attachment 1:

Attachment 2:

Attachment 3:

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT
(U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION
(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

SATELLITE EARTH STATION AUTHORIZATIONS
FCC Form 312 – Schedule A
FOR OFFICIAL USE ONLY

Select one of the following

- ☒ **CONSENT TO TRANSFER OF CONTROL**

 ☐ **CONSENT TO ASSIGNMENT OF LICENSE**
☐ **NOTIFICATION OF TRANSFER OF CONTROL OF RECEIVE ONLY REGISTRATION**

 ☐ **NOTIFICATION OF ASSIGNMENT OF RECEIVE ONLY REGISTRATION**

A1. Name of Licensee (as shown on FCC 312 – Main Form)

Name:	Vyvx, LLC	Phone Number:	918-547-2764
DBA Name:		Fax Number:	918-547-9446
Street:	One Technology Center 15L	E-Mail:	Adam.Kupetsky@wiltel.com
City:	Tulsa	State:	OK
Country:	USA	Zipcode:	74103 –
Attention:	Adam Kupetsky		

A8. List Callsign(s) of station(s) being assigned or transfered

Callsign: E000352	Callsign:	Callsign:	Callsign:	Callsign:	Callsign:	Callsign:	Callsign:
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A9. No. of station(s) listed

1

A10. Name of Transferor/ Assignor

Name:	Joseph Orlando	Phone Number:	212-460-1977
Company:	Leucadia National Corporation	Fax Number:	
Street:	315 Park Avenue South	E-Mail:	
City:	New York	State:	NY
Country:	USA	Zipcode:	10010 -
Attention:		Relationship:	

A15. Name of Transferee/ Assignee

Name:	Level 3 Communications, LLC	Phone Number:	720-888-2516
DBA Name:		Fax Number:	720-888-5134
Street:	1025 Eldorado Blvd.	E-Mail:	bill.hunt@level3.com
City:	Broomfield	State:	CO
Country:	USA	Zipcode:	80021 -
Attention:	Mr William P Hunt III		

A20. If these facilities are licensed, is the transferee / assignee directly or indirectly controlled by any other entity? ☒ Yes
 If yes, attach as Exhibit E, a statement (including organizational diagrams where appropriate) which fully and completely identifies the nature and extent of control including: (1) the name, address, citizenship, and primary business of the controlling entity and any intermediate subsidiaries or parties, and (2) the names, addresses, citizenship, and the percentages of voting and equity stock of those stockholders holding 10 percent or more of the controlling corporation's voting stock. ☐ No ☐ N/A

A21. If these facilities are licensed, attach as Exhibit F, a complete statement setting forth the facts which show how the assignment or transfer will serve the public interest.

CERTIFICATION

1. The undersigned, individually and for licensee, certifies that all attached exhibits pertain to Schedule A and all statements made in Schedule A of this application are true, complete and correct to the best of his/her knowledge and belief. The undersigned also certifies that any contracts or other instruments submitted herewith are complete and constitute the full agreement.

2. The undersigned represents that stock will not be delivered and that control will not be transferred until the Commission's consent has been received, but that transfer of control or assignment of license will be completed within 60 days of Commission consent. The undersigned also acknowledges that the Commission must be notified by letter within 30 days of consummation.

A22. Printed Name of Licensee (Must agree with A1)
 Vyvx, LLC

A24. Title (Office Held by Person Signing)
 Joseph Orlando, CFO & VP

A26. Printed Name of License Transferor / Assignor
 (Must agree with A10)
 Leucadia National Corporation

A28. Title (Office Held by Person Signing)
 Joseph Orlando, CFO & VP

A26. Printed Name of License Transferee / Assignee
 (Must agree with A15)
 Level 3 Communications, LLC

A28. Title (Office Held by Person Signing)
 William P Hunt III, VP, Public Policy

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PERF, Paperwork Reduction Project (3060-0678), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to jboley@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember – You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0678.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

EXHIBIT F

Public Interest Statement

(Provided pursuant to FCC Form 312, Schedule A, Question A21)

The earth station authorization(s) subject to this application relate(s) to satellite earth stations currently used by Vyvx, LLC to provide video backhaul capacity. Approving the transfer of control of these authorization(s) from Vyvx, LLC to Level 3 Communications, LLC ("Level 3") will serve the public interest by increasing the capacity and services available to Level 3's customers and, as a result, by improving the services ultimately available to end-user consumers. In particular, this transfer will allow Level 3 to offer additional video backhaul services, thereby enabling its customers to obtain a greater array of services and capacity. Thus, the transfer will result in increased operating efficiencies and service options for Level 3's customers and, indirectly, in a wider choice of enhanced, cost-effective services for end-user consumers.

EXHIBIT E

Description of Transferee Control Structure
(Provided pursuant to FCC Form 312, Schedule A, Question A20)

- (1) **Name, Address, Citizenship, and Primary Business of the Controlling Entity and Any Intermediate Subsidiaries or Parties**
- Level Communications, LLC—the proposed transferee of the earth station authorization(s) subject to this application—is a direct, wholly-owned subsidiary of Level 3 Financing, Inc. (“Level 3 Financing”).
 - Level 3 Financing—a Delaware corporation headquartered at 1025 Eldorado Boulevard, Broomfield, Colorado 80021—is engaged in the business of providing managed information technology infrastructure services across a variety of platforms. Level 3 Financing, in turn, is a direct, wholly-owned subsidiary of Level 3 Communications, Inc.
 - Level 3 Communications, Inc. is a Delaware corporation headquartered at 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Level 3 Communications, Inc. is a global communications and information services company that offers a wide range of communications services over its 23,000 mile broadband fiber optic network, including IP-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 Communications, Inc. is a publicly traded company listed on NASDAQ (symbol: LFLT).

(2) Name, Address, Citizenship, and the Percentages of Voting and Equity Stock of Stockholders Holding 10 Percent or More of the Controlling Corporation's Voting Stock

Three parties hold a ten-percent-or-greater direct or indirect interest in Level 3

Communications, Inc:

- (1) Southeastern Asset Management, Inc. ("SAM"): SAM is a Tennessee corporation engaged in the business of providing investment advisory services and located at 6410 Poplar Avenue, Suite 900, Memphis, Tennessee 38119. SAM holds sole or shared voting rights for 22.15 percent of outstanding shares of Level 3

Communications, Inc., that are otherwise owned by other entities for whom SAM acts as an investment advisor, including shared voting rights for the shares owned by Longleaf Partners Fund ("LPF"). Other than LPF, none of the other owners of outstanding shares of Level 3 Communications, Inc., whose shares are voted by SAM owns a 10-percent-or-greater direct or indirect interest in Level 3

Communications, Inc.

- (2) Longleaf Partners Fund: LPF is a Massachusetts business trust engaged in the business of investment and located, in care of SAM, at 6410 Poplar Avenue, Suite 900, Memphis, Tennessee 38119. LPF owns 11.8 percent of the outstanding shares of Level 3 Communications, Inc., and shares with SAM the voting rights for those shares.

- (3) Legg Mason, Inc. ("Legg Mason"): Legg Mason is a Maryland corporation engaged, through its subsidiaries, in the business of providing financial services, including investment advisory services, securities brokerage services, and capital markets services. Legg Mason is located at 100 Light Street, Baltimore,

Maryland 21202. In aggregate, two subsidiaries of Legg Mason vote 10.776 percent of outstanding shares of Level 3 Communications, Inc., that are otherwise owned by other entities for whom the subsidiaries act as an investment advisor. These subsidiaries are: (1) Legg Mason Capital Management, Inc. ("LMCM"), which holds a 5.764 percent voting interest, and (2) LMM, LLC ("LMM"), which holds a 5.012-percent voting interest. LMCM is a wholly-owned subsidiary of Legg Mason, while LMM is 50-percent owned by Legg Mason.

None of these three parties holding a ten-percent-or-greater direct or indirect interest in Level 3 Communications, Inc., holds a seat on the board of directors of Level 3 Communications, Inc.

EXHIBIT Q.43

Description of the Proposed Transaction
(Provided pursuant to FCC Form 312, Question 43)

On October 30, 2005, Leucadia National Corporation ("Transferor") and its affiliates and Level 3 Communications, LLC ("Transferee"), and its affiliates entered into a Stock Purchase Agreement to allow Transferee and its affiliates to acquire all of the outstanding shares of WilTel Communications Group, LLC, an indirect wholly-owned subsidiary of Transferor ("Proposed Transaction"). Upon consummation of the Proposed Transaction, Transferee will control WilTel Communications, LLC ("WilTel"), and its subsidiary, Vyvx, LLC ("Applicant"), including: (1) Applicant's satellite earth station authorizations; (2) Applicant's terrestrial wireless licenses; (3) Applicant's international Section 214 authorization for global facilities-based and global resale services; (4) WilTel's international Section 214 authorization for global facilities-based and global resale services; (5) WilTel's foreign subsidiaries in Canada, Japan, the Netherlands, and the United Kingdom; (6) WilTel's domestic common carrier transmission lines; and (7) WilTel's joint interest in the cable landing license for the China-U.S. Cable Network.

Applicant has filed this Form 312 application seeking Commission consent for the transfer of control of the satellite earth station authorization(s) referenced herein. Concurrent with these application, the parties to the Proposed Transaction have applied for Commission consent to transfer to Level 3 WilTel's international Section 214 authorization and domestic common-carrier transmission lines and WilTel's joint interest in the cable landing license for the China-U.S. Cable Network, as well as the Applicant's international Section 214 authorization, terrestrial wireless licenses, and other satellite earth station authorizations.